

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.526 of 2016

1.Mohanambal

2.Selvi

3.Raji@Devaraji

4.S.Sarasu@Saraswathi

5.G.Eswaran@ Kannan

6.R.Mallika

7.G.Anbu

... Appellants

vs.

G.Sekar

... Respondent

Appeal suit filed under Section 96 and Order XLI Rule 1 of Civil Procedure Code, 1908 against the judgment and decree dated 15.04.2016, passed by the XV Additional City Civil Court, Chennai, in O.S.No.113 of 2013.

For Appellants : Mr.G.Suriyanarayan for
Mr.M.Balakrishna

For Respondent : Mr.A.Thamizharasan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit is directed against the judgment and decree dated 15.04.2016 passed in O.S.No.113 of 2013 by the XV Additional City Civil Court, Chennai.

2.The appellants herein, as plaintiffs, have instituted O.S.No.113 of 2013, on the file of the trial Court, praying to pass a preliminary decree of partition in respect of their 7/8 shares in the suit property, wherein, the present respondent has been shown as sole defendant.

3.The material averments made in the plaint are that the suit property is originally belonged to one Govindasamy and he married one Radha as his first wife. The plaintiffs 4 to 7 and defendant are the children born through the said Radha and she passed away in the year 1967. After her demise, the said Govindasamy, has married the first plaintiff as his second wife and the plaintiffs 2 and 3 are the children born through her. The said Govindasamy has passed away, leaving behind him the plaintiffs and defendant as his legal heirs. In aggregation, all the plaintiffs are entitled to get 7/8 shares, whereas the defendant is entitled to get 1/8 share in the suit property. The defendant has refused to concede the demand of partition made by the plaintiffs. Under the

said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed by the defendant it is averred to the effect that the defendant is one of the sons of deceased Govindasamy. After the demise of mother of the defendant and plaintiffs 4 to 7, the said Govindasamy has not married the first plaintiff. It is false to aver that the plaintiffs 2 and 3 are the children born to the said Govindasamy through the first plaintiff. The plaintiffs 1 to 3 are totally aliens to the family of Govindasamy. The plaintiffs 1 to 3 are not having any partible interest in the suit property and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has dismissed the suit in toto, by way of passing the impugned judgment and the same is being challenged in the present appeal suit.

6. The sum and substance of the case of the plaintiffs is that the suit property is the absolute property of one Govindasamy and he married one Radha as his first wife. The plaintiffs 4 to 7 and defendant are the children born through her. After her demise in

the year 1967, he married the first plaintiff as his second wife and she has begotten the plaintiffs 2 and 3. The said Govindasamy has passed away leaving behind him the plaintiffs and defendant as his legal heirs and in aggregation, the plaintiffs are having 7/8 shares in the suit property, whereas, the defendant is having only 1/8 share.

7.The defence put forth on the side of the defendant is that after the demise of mother of the defendant, his father, viz., Govindasamy, has not married the first plaintiff as his second wife; the plaintiffs 2 and 3 are not born through her and in short, the plaintiffs 1 to 3 are totally aliens to the family of deceased Govindasamy. Under such circumstances, they are not having any partible interest in the suit property and therefore, the present suit deserves to be dismissed.

8.The only point that has now winched to the fore in the present appeal is as to whether the plaintiffs 1 to 3 are the legal heirs of deceased Govindasamy.

9.The trial Court, after considering the available evidence on record, has given a finding to the effect that the plaintiffs 1 to 3 have failed to establish that they are the legal heirs of Govindasamy and ultimately dismissed the suit in toto.

10.The learned counsel appearing for the appellants/plaintiffs has repeatedly contended to the effect that the suit property is the absolute property of Govindasamy and he married one Radha as his first wife and the plaintiffs 4 to 7 and defendant are the children born through the said Radha and she passed away in the year 1967 and after her demise, he married the first plaintiff as his second wife in the year 1968 and she had begotten the plaintiffs 2 and 3 and since the said Govindasamy has passed away, the plaintiffs and defendant are his legal heirs and under the said circumstances, the present suit has been instituted for getting the relief of partition and even though on the side of the plaintiffs replete evidence is available for the purpose of proving the nexus between the plaintiffs 1 to 3 and deceased Govindasamy, the trial Court has erroneously dismissed the suit in toto, even without decreeing the suit as far as the shares of the plaintiffs 4 to 7 and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

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11.To repudiate the contentions put forth on the side of the appellants/plaintiffs, the learned counsel appearing for the respondent/defendant has also equally contended to the effect that the entire case of the plaintiffs proceeds on the basis that the first plaintiff is the second wife of deceased Govindasamy and the plaintiffs 2 and 3 are born through her. But, for the purpose of

establishing the said aspect, no clinching document has been forthcoming on the side of the plaintiffs and since the plaintiffs have not at all established the said vital aspect, the trial Court has rightly dismissed the suit and therefore, the judgment and decree passed by the trial Court do not require any interference.

12.As pointed out earlier, the only question that has to be decided in the present appeal suit is as to whether the first plaintiff is the legally wedded second wife of deceased Govindasamy, after the demise of his first wife, viz., Radha.

13.Even though on the side of the plaintiffs as many as seven documents have been exhibited, the Court has to look into Ex.A2. Ex.A2 is a handbook issued by the Tamil Nadu Slum Clearance Board, wherein, the names of all the plaintiffs and defendant are found place. Apart from Ex.A2, the Court has to meticulously look into the evidence given by P.Ws.2 and 3.

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14.The brothers of the defendant, by name Eswaran and Anbu (Plaintiffs 5 and 7) have been examined as P.Ws.2 and 3. The specific evidence given by P.W.2 is that the first plaintiff is the second wife of his father. The plaintiffs 2 and 3 are the children

born through her. Likewise, P.W.3 has given clear evidence to the effect that the first plaintiff is the second wife of his father. Since the evidence given by P.W.2 has been clearly corroborated by the evidence given by P.W.3 and since P.Ws.2 and 3 are nothing but brothers of the defendant, the Court has no other option except to accept the evidence given by P.Ws.2 and 3. In fact, this Court has clearly scanned the entire evidence adduced by P.Ws.2 and 3 and found that no serious animosity has been in existence between them and defendant. Since P.Ws.2 and 3 are the brothers of the defendant, their evidence is nothing but a clear answer to the defence taken by the defendant.

15.It has already been pointed out that the only defence taken on the side of the defendant is that the plaintiffs 1 to 3 are not the legal heirs of deceased Govindasamy and he never married the first plaintiff as his second wife. Since P.Ws.2 and 3 have given clearcut evidence to the effect that the first plaintiff is the second wife of deceased Govindasamy and the plaintiffs 2 and 3 are the children born through him, it is needless to say that the defence taken on the side of the defendant is nothing but false.

16.It is seen from the records that the suit property is the absolute property of deceased Govindasamy. He married the mother of the plaintiffs 4 to 7 and defendant, by name Radha and

she passed away in the year 1967. The first plaintiff has been examined as P.W.1 and her specific evidence is that the said Govindasamy has married her in the year 1968. Since after the demise of Radha in the year 1967, the deceased Govindasamy has married the first plaintiff as his second wife, she is also having partible interest in the suit property.

17.The plaintiffs, in aggregation, have claimed 7/8 shares in the suit property. It has already been pointed out that the plaintiffs 1 to 3 are also legal heirs of deceased Govindasamy and therefore, the quantum of shares claimed by the plaintiffs is perfectly correct.

18.The trial Court has dismissed the suit in toto simply on the ground that the plaintiffs 1 to 3 have not established their alleged status. As rightly pointed out on the side of the appellants/plaintiffs, the trial Court has committed a mistake to the effect that it has dismissed the suit in entirety even without considering the shares of the remaining plaintiffs 4 to 7.

19.It has already been pointed out that on the side of the plaintiffs abundant evidence is available for the purpose of proving that the plaintiffs 1 to 3 are the legal heirs of deceased Govindasamy. Since on the side of the plaintiffs replete evidence is

available for the purpose of proving their alleged status, this Court is of the view that the relief sought in the suit can easily be granted in favour of the plaintiffs.

20.The trial Court, without considering the evidence adduced by P.Ws.2 and 3 and also Ex.A2, has erroneously dismissed the suit and therefore, the judgment and decree passed by the trial Court are liable to be set aside and the suit is liable to be decreed as prayed for.

In fine, this Appeal Suit is allowed without costs. The judgment and decree passed in O.S.No.113 of 2013 by the trial Court are set aside and O.S.No.113 of 2013 is decreed as prayed for without costs.

सत्यमेव जयते

(A.S.J.)

(P.K.J.)

06.03.2018

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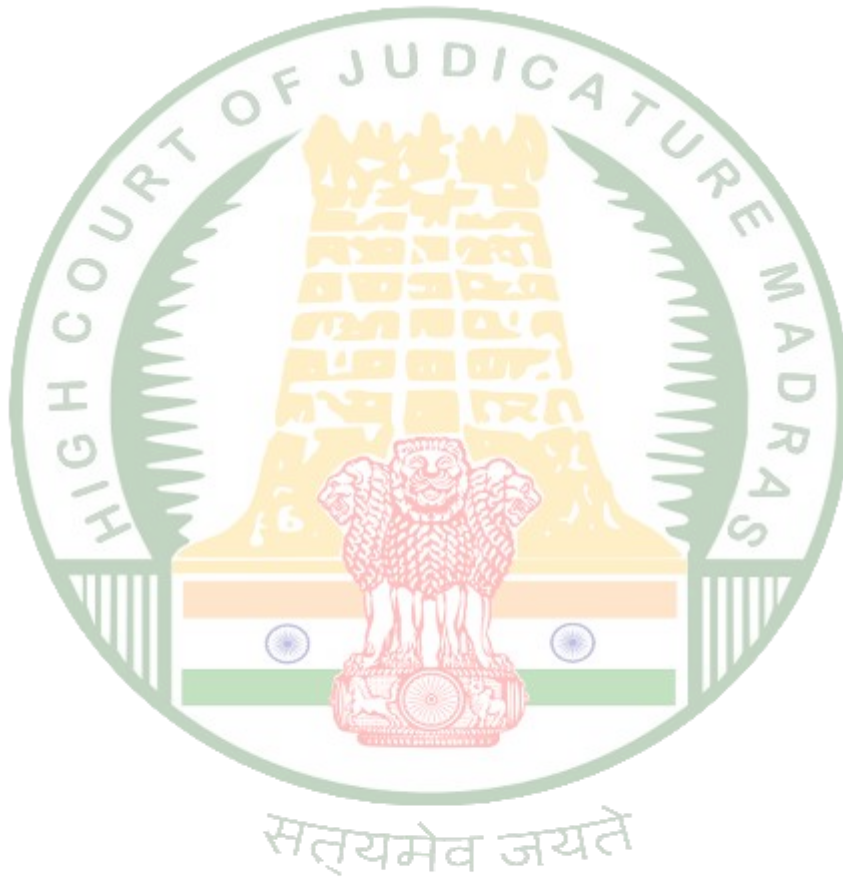
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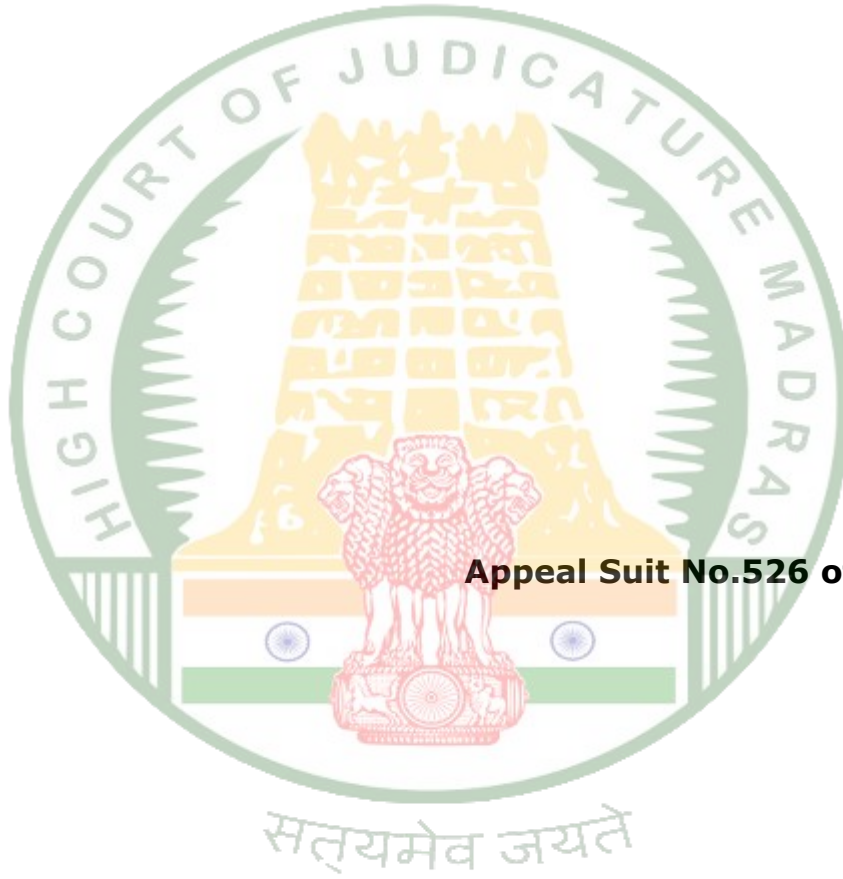
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Chennai.



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**A.SELVAM,J.
and
P.KALAIYARASAN,J.**

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